IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

CRP.No. 171 of 2002(C)

OS.283/2000 of PRL.MUNSIFF, KASARAGOD

REVN. PETITIONER: DEFENDANT:

THE WEST INDIA SOAP & INDUSTRIAL
COMPANY, REPRESENTED BY ITS PARTNER,
PRAKASH PRABHU, NEW FIELD STREET, MANGALAPURAM.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SMT.ASHA SUNDARAM
SRI.PAUL ABRAHAM

RESPONDENT: PLAINTIFF:

M/S. PRABHU AGENCIES, REPRESENTED BY
PUNDALIKA PRABHU, KARANDAKKAD, KASARGOD.

BY ADV. SRI.T.L.ANANTHASIVAN
SMT.P.LISSY JOSE.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON 24/8/2007 PASSED THE FOLLOWING:

C.M.P.NO.368/2002 IN C.R.P.NO.171/2002

DISMISSED

24/8/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

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K.T. SANKARAN, J.

C.R.P. NO. 171 OF 2002

Dated this the 24th day of August, 2007

O R D E R

The defendant in a suit for accounting challenges the findings of the trial court on the issue of court fee. The suit was filed by the respondent for accounting, directing the defendant to produce the account books with all bills, receipts, vouchers and price list since 1992 to 28.2.2000 and subject the same to be examined by a qualified accountant. The relief was valued at Rs.1,000/- and court fee of Rs.20/- was paid under Section 35 read with Article (1) of Schedule 1 of the Kerala Court Fees and Suit Valuation Act. It is stated in the plaint that the relief is not capable of valuation. There is another prayer to declare that as per the alleged mediation dated 28.2.2000, the business between the plaintiff and the defendant is not closed. This relief was valued at Rs.1,000/- and court fee of Rs.20/- was paid under Section 25(d)(ii) of the Court Fees Act stating that the relief is not capable of valuation. The further prayer is to pass a preliminary decree directing the defendant to pay the amount, if found due on examination of the accounts. This relief was valued at Rs.1,000/- and court fee of Rs.20/- was paid under Section 25(d)(ii). Thus the total valuation of the suit was at Rs.3,000/- and a total court fee of Rs.60/- was paid. The suit was filed before the Munsiff's Court, Kasaragod. The defendant contended in the

written statement that “the value of the relief claimed in the suit is incorrect and imaginary and unknown to law and hence the court fee paid is not correct”.

2. Based on the contention raised by the defendant, the trial court raised additional issue No.5 as follows:

“Whether the court fee paid by the plaintiff is correct or not?”

The trial court held that the plaintiff has properly valued the suit and paid the court fee. It was held that only on examination of the receipts and vouchers by the experts, the exact amount in respect of which the plaintiff has to pay proper court fee would emerge.

3. The defendant contends that as per I.A.No.2148 of 2001, the plaintiff produced certain documents, as per which he claims that he is entitled to more than Rupees Four lakhs. The documents produced by the plaintiff would indicate that sales tax in excess was collected from the plaintiff by the defendant and the excess tax paid by the plaintiff during 1992-93 is Rs.42,403/-. For the year 1993-94, the excess amount paid was calculated at Rs.1,69,245/-. For the year 1994-95, the excess amount paid was calculated at Rs.1,72,860/- and for the year 1995-96, it was claimed that a sum of Rs.39,944/- was collected in excess from the plaintiff.

The total of these amounts would come to Rs.4,24,452/-. The contention of the defendant is that the amount claimed by the plaintiff exceeds Rupees Four lakhs and that the Munsiff's Court will have no jurisdiction to try the suit as the pecuniary limit of the suit that could be tried by a Munsiff's Court is only up to Rupees One lakh. It is also contended that the plaintiff cannot be allowed to have a luxury litigation without paying proper court fee and the suit is speculative and unsustainable.

4. Counsel for the revision petitioner, Sri.V.V.Asokhan, contended that paragraph 6 of the plaint clearly shows that the plaintiff was aware as to what exactly was due from the defendant. It is stated in paragraph 6 that in the course of the business the defendant collected sales tax at the rate of 8% since 1992 instead of 4% and that the plaintiff did not raise any dispute in order to maintain the good relationship between the plaintiff and the defendant. It is contended that the documents produced along with I.A.No.2148 of 2001 show the amount claimed on the ground of excess payment of sales tax. According to the counsel for the revision petitioner, it is clear that the plaintiff claims a sum of Rs.4,24,452/- from the defendant on this count. Sri.Asokhan relied on the decisions reported in **Abdul Hamid Shamai** v. **Abdul Majid and others** (AIR 1988 SC 1150) and **Eastman Kodak Company** v. **M/s.M.R.Electronics and others** (AIR 1995

Delhi 136). He also submitted that Section 12(2) of the Court Fees Act gives ample power to the court to review and fix the court fee at any time.

5. Learned counsel for the respondent Sri.Anantha Sivan contended that the revision is not maintainable after the amendment of the Code of Civil Procedure, which came into force on 1.7.2002, and relied on the decision of the Supreme Court in **Shiv Shakthi Co-operative Housing Society, Nagpur** v. **Swaraj Developers** ((2003) 6 SCC 659). He also relied on the decision of the Supreme Court in **Sujir Keshav Nayak** v. **Sujir Ganesh Nayak** (1992(1) KLT 283) (which reversed the decision of this Court reported in **Sujir Keshav Nayak** v. **Sujir Ganesh Nayak** (1991 (2) KLJ 37) and the decision in **Abdul Razack** v. **Anjaneyan** (2002 (2) KLT 670) in support of his contention on the merits. Counsel contended that Section 12(2) of the Court Fees Act would apply only when the court comes to a definite finding that the valuation comes to a large amount.

6. I shall first deal with the contention whether the revision is maintainable. In **Shiv Shakthi Co-operative Housing Society, Nagpur** v. **Swaraj Developers** ((2003) 6 SCC 659 = 2003 (2) KLT 503 (SC)), it was held:

> "A plain reading of S.115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is `yes' then the revision is maintainable. But on the contrary, if the answer is `no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable..."

In view of the proviso to Section 115(1) of the Code of Civil Procedure, by exercising jurisdiction under Section 115 the High Court shall not vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings. Explanation to Section 115 provides that the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding. In the facts of the case, if the court accepts the case of the defendant that the suit would not be maintainable before the Munsiff's Court on proper valuation, that will put an end to the litigation before that court. The plaint would be returned to the plaintiff for presentation before the proper court. So far as the proceeding before the Munsiff's Court is concerned, return of plaint would put an end to the proceedings. The plaintiff may thereafter present the plaint in the proper court or he may not present it. The plaintiff need not present the plaint in the proper court at all if he is not willing to

pay the necessary court fee on the proper valuation. Therefore, it can be safely concluded that the proceedings would come to an end in the Munsiff's Court on the return of the plaint holding that the suit is not maintainable before the Munsiff's Court. If the order passed by the court below is set aside in this revision and held that the suit would not lie before the Munsiff's Court, it would have the result of wiping out the proceedings before the Munsiff's Court. Therefore, I am of the view that a revision challenging the finding of the trial court on the question of valuation of the suit and jurisdiction is maintainable under Section 115 of the Code of Civil Procedure. If the orders passed by the court below were in favour of the Revision Petitioner, it would have the effect of holding that it has no jurisdiction to try the suit. In the case on hand, it is the case of the revision petitioner that if proper valuation is made the suit would not be maintainable before the Munsiff's Court. Therefore, I hold that the Civil Revision Petition is maintainable and overrule the preliminary objection raised by the respondent.

7. The court below rejected the contentions raised by the revision petitioner and held thus:

> "The receipts and vouchers etc. are to be verified and examined by experts and then only we will have a clear picture about the amount to which the plaintiff has to pay proper court

> fees if he wants the suit for further more and for getting a decree in his favour as he pleases. So this additional issue No.5 framed is found in favour of the plaintiff."

The Court below also held thus:

> "None of the parties can say the exact amount either due to the plaintiff or to the defendant without examining the entire account with the plaintiff and defendant."

To my mind, the court below has not considered the question in the proper perspective. The contention of the revision petitioner that the suit would not be maintainable before the Munsiff's Court if a proper valuation is made, was not considered by the court below. To arrive at that conclusion, it is not necessary to find out the exact amount due to the plaintiff. Since all the relevant facts have not been considered by the court below, I am inclined to set aside the order passed by the court below.

8. I am of the view that issue No.5 as it stands, is not sufficient to meet the situation. The court below shall re-cast the issue appropriately so as to include the question of valuation and jurisdiction as well.

Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside. The trial court shall consider afresh issue No.5

after re-casting the same. An opportunity of being heard shall be afforded to the parties.

(K.T.SANKARAN)
Judge

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K.T.SANKARAN, J.

C.R.P.NO. 171 OF 2002 C

O R D E R

24th August, 2007